IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.Rev.Pet.No. 596 of 1999

CRA.93/1997 of IST ADDL. SESSIONS COURT, THRISSUR
CC.135/1995 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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REVN. PETITIONER:
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1. BAIJU, S/O. KALAMPARAMBIL VELAYUDHAN
CHERUKUNNU, PUTHUR.

2. SHAJU, S/O. IYNIKATTILN SUDHAKARAN,
KURUDANCHIRA, PUTHUR.

3. KISHORE, S/O. KALAMPARAMBIL KRISHNAN,
CHERUKUNNU, PUTHUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC PORECUTOR,
HIGH COURT OF KERLAA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR. C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO. 2656 OF 1999 IN CRL.R.P.NO. 596 OF 1999

DIMISSED.

8-3-2007 **K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.596 of 1999

DATED THIS THE 8TH DAY OF MARCH 2007

ORDER

The revision petitioners, who are accused 1,2, and 8 in C.C.No.135/1995 in the file of the Judicial Magistrate of First Class-III, Thrissur with respect to the offences under Sections 143,147,148,324,326 read with Section 149 of the Indian Penal Code stands convicted and sentenced to undergo simple imprisonment for three years and to pay a fine of Rs.5,000/- each for the offence under Section 326 IPC ; to undergo simple imprisonment for one year each for the offence under Section 324 and 148 IPC; simple imprisonment for six months for the offence under Section 147 IPC and three months for the offence under Section 143 IPC and in default of payment of fine to undergo simple imprisonment for six months. Out of the fine amount, if realised, 50% is to be paid to the injured. Accused Nos. 3 and 6 were absconding and the case against them has been refiled. Accused Nos.4,5, 7 and 9 were acquitted as per the order of the Sessions Judge in appeal.

2. The prosecution case is that accused nine in number formed themselves into an unlawful assembly armed with deadly weapons like sword, caused hurt to PWs.1,3,4 and 5. The prosecution case is that

on 8-5-1995 at about 8 p.m. the accused stopped the autorikshaw in which the injured were travelling and smashed the wind screen of the autorikshaw and attacked them, on account of political animosity. The evidence adduced in support of the prosecution case consisted of the testimony of PWs.1 to 14 and MOs.1 and 2, sword and stick. Of the proseuciton witnesses, PWs.1,3,4 and 5 are the injured and PW2, the autorikshaw driver. PW5 did not support the prosecution and was treated as hostile. The point raised by the revision petitioner is with respect to the inconsistencies in the evidence. It is pointed out that in the F.I.S. itself it is alleged that it was on PW10 who inflicted the blow with the sword on PW3 as a result of which his middle finger of the right hand was cut off. The names of of Peter and Kottikal Sivan and Khader are permanently mentioned in the F.I.S. whereas Peter and Sivan have not been implicated in the final report. PW1 who has rendered the F.I.S. has specifically mentioned that it was Peter who inflicted the blow that resulted in the amputation of middle finger of PW3. Both the courts below have come down heavily on the statement of PW4, the investigaing officer as to the reason for not implicating the above persons. In the depositions of Pws.1 and 3 also the version as to the involvement of Peter as the person who

inflicted the blow that resulted in the traumatic amputation of the middle finger of PW3 is somewhat inconsistent. PW1 has stated that the blow was inflicted by Peter as he had mentioned in the F.I.S. whereas PW3 has stated that the blow that resulted in the amputation in the middle finger was inflicted by Khader, the absconding accused. It appears that the blow that resulted in the major injury that attracted Section 326 was not inflicted by the revision petitioners /accused herein. Of course, the same would not absolve them of the offences alleged as the common object vide Section 149 is alleged and the evidence in this regard as to the unlawful assembly and the criminal assault by the accused stands established.

3. The contention that there was no evidence as to the existence of light at the spot also cannot be uphold in view of the fact even in the F.I.S. it is stated that they could identify the accused in the brightness of the street light.

4. On a consideration of the evidence adduced, I find no reason to deviate from the findings of the courts below. The conviction is confirmed.

5. Counsel for the revision petitioner has pleaded for leniency considering the fact that more than 10 years have elapsed since the commencement of the prosecution and also on the ground that the overt act that resulted in the amputation of the middle finger of the right hand of PW3 was not inflicted by any of the revision petitioners herein. In the circumstances, the sentence is modified to simple imprisonment for two months for the offence under Section 326 IPC and a fine of Rs.5,000/- each and in default to undergo simple imprisonment for six months. It is submitted that the fine amount has already been deposited. I find that no separate sentence is to be awarded for the rest of the offences. Hence, the punishment imposed for the rest of the offences is set aside. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.596 OF 1999

ORDER

8th March 2007